

BEFORE THE UNITED STATES COURT OF FEDERAL CLAIMS

PUEBLO OF JEMEZ)	
)	
Plaintiff,)	
)	
Vs.)	Case No. <u>22-828 L</u>
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

COMPLAINT

STATEMENT OF THE CASE

1. This is a claim for money damages arising from Defendant’s breach of certain fiduciary duties owed to the Pueblo of Jemez grounded in the trust relationship of the United States of America to the Pueblo as manifested in 25 U.S.C. § 415 and 25 C.F.R. § 162 *et seq.*

2. This lawsuit arises from the United States of America’s failure to take any action to address trespass by another agency of the United States, the U.S. Postal Service (“USPS”), and other third parties, on the Pueblo of Jemez’s grant lands following the expiration of a Bureau of Indian Affairs approved one-(1) year lease with the USPS on July 31, 2016, which trespass continues to the present.

3. The actions here complained of have caused and will cause the Pueblo to sustain financial injury which should be compensated by the United States of America by an award of money damages in an amount to be proven at trial.

PARTIES

4. The Pueblo of Jemez is a federally recognized Indian tribe. The Pueblo is the beneficiary of certain fiduciary duties owed to it by the United States of America.

5. The United States of America is a sovereign nation which has assumed and owes certain fiduciary duties to the Pueblo and other recognized Indian tribes. The United States of America is the sole permissible statutory defendant in suits by Indian tribes seeking money damages for breaches of the government's fiduciary duties to Indian tribes.

JURISDICTION

6. The jurisdiction of this Court is founded upon 28 U.S.C. § 1491, the Tucker Act and 28 U.S.C. § 1505, the Indian Tucker Act.

7. This suit arises under and is the result of violations and breaches by the United States Department of the Interior, Bureau of Indian Affairs, of certain ("money mandating") federal statutory and regulatory obligations which give rise to enforceable fiduciary duties of the United States Department of the Interior, Bureau of Indian Affairs ("BIA") triggered by the expiration of a prior BIA approved lease of restricted Indian lands in contravention of said statutes and regulations and the BIA's actions and inactions following the expiration of that lease, all as is more fully set out below.

8. The Pueblo of Jemez is the beneficial owner of certain Pueblo of Jemez grant lands geographically located in the County of Sandoval, State of New Mexico. This land is "restricted Indian land" within the meaning of 25 U.S.C. § 415(a).

9. The Secretary of the Interior has been given the authority and the responsibility for approving or disapproving proposed leases of Indian Reservation lands

to third parties, and for policing the unlawful continued use of such land by former tenants or subtenants upon the expiration of any such BIA approved lease. That Secretarial authority and responsibility is required to be exercised and carried out in accordance with the provisions of 25 U.S.C. § 415 and 25 C.F.R. Part 162 *et seq.* Those statutory and regulatory provisions impose enforceable fiduciary duties upon the government.

10. The Secretary of the Interior has delegated authority to the Southwest Regional Office, Bureau of Indian Affairs, to approve or disapprove proposed leases of restricted Indian lands for tribes within the Southwest Region, including the Pueblo of Jemez, on behalf of the Secretary. The delegated authority and responsibility is required to be exercised and carried out in conformity with the controlling statutory and regulatory provisions.

11. On or about July 19, 2015, the Pueblo and USPS entered into a one (1) year lease extension agreement to extend the term to July 31, 2016, of a prior BIA approved twenty-five (25) year lease between the Pueblo and the United States Postal Service (“USPS”), which expired on July 31, 2015, per Section 4 thereof. A true and correct copy of that expired twenty-five (25) year lease is attached hereto as **Exhibit A** and incorporated herein as if specifically set out.

12. The BIA duly approved that one (1) year lease extension agreement on or about August 29, 2015. A true and correct copy of the said one (1) year extension agreement is marked **Exhibit B**, attached hereto and incorporated herein as if specifically set forth.

13. The purpose of the lease extension agreement was described as follows:

To extend the terms and conditions of the said Lease, as the same may have been modified or amended, for a fixed term basis beginning 08/01/2015 and ending 07/31/2016 at an annual rental of \$4,430.00.

14. 25 C.F.R. § 162.415(a) requires business leases to “specify who will own any permanent improvements the lessee constructs during the lease term and may specify under what conditions, if any, permanent improvements the lessee constructs may be conveyed to the Indian landowners during the lease term.” That section further adds:

the lease must indicate whether each specific permanent improvement the lessee constructs will:

- (1) Remain on the leases premises, upon the expiration, cancellation, or termination of the lease, in a condition satisfactory to the Indian landowners, and become the property of the Indian landowners;
- (2) Be removed within a time period specified in the lease, at the lessee’s expense, with the leased premises to be restored as closely as possible to their condition before construction of the permanent improvements; or
- (3) Be disposed of by other specified means.

25 C.F.R. § 162.415(a).

15. The original USPS Ground Lease (**Exhibit A**) at § a.23B. expressly provided that “... unless otherwise provided herein, it is understood and agreed that any building or other improvements placed upon the land by the U.S. Postal Service become the property of Lessor upon termination of this Lease with the exception of all U.S. Postal Service personal property.” There is no conflict between the provisions of the USPS Ground Lease and 25 C.F.R. Part 162.415(a) regarding ownership of improvements. Therefore, based on the provisions of the USPS Ground Lease and 25

C.F.R. Part 415(a) the postal facility located on the land previously leased to USPS became the property of the Pueblo of Jemez upon expiration of the USPS Ground Lease.

16. The USPS on or about 1991 and later in 2020 entered into purported subleases with certain third parties or their successors or assigns under which the USPS has been paying building rents to those purported sublessees.

17. Those subleases were never legally valid because BIA approval of them was required, but BIA approval was never obtained for those purported subleases as required by the plain terms of § A.12.D-Subleases and Assignments of the original USPS lease (as extended to July 31, 2016 (“unless otherwise provided herein, a sublease ... of this Lease may be made only with the approval of the Secretary ...”). *See*, Exhibits A and B), and by the terms of the then applicable leasing regulations at 25 C.F.R. § 162.12(a)(4-1-91 ed):

Except as provided in paragraphs (b) (c) and (d) of this section, a sublease ... of any... lease ... issued under this part may be made only with the approval of the Secretary ...

18. Even if the subleases as originally executed had been legally valid, they came to an end upon the expiration of the Pueblo’s ground lease with the USPS (as extended) as of July 31, 2016.

19. Nonetheless, the USPS has continued to pay building rentals to the purported sublessees since July 31, 2016, and has paid no building rentals to the Pueblo from that date to the present.

20. The USPS has also continued to pay ground lease rentals to the Pueblo since July 31, 2016, based on the annual ground lease rental amount set out in Section

3—Rental of the expired 1991 ground lease, which amount was periodically adjusted and increased from time to time, notwithstanding the expiration of that ground lease on July 31, 2016.

21. The Pueblo, as the owner of the subject USPS building since July 31, 2016, has suffered the loss of fair market value rents on that building due to the actions and inactions of the United States in failing to give notice to USPS and the prior purported sublessees that the Pueblo became the owner of the subject USPS building upon the expiration of the (extended) ground lease on July 31, 2016, and that the Pueblo (not the purported sublessees) was entitled to receive fair market value rents (or rents otherwise approved by the Pueblo and the Secretary) for both the land and the building here at issue.

22. 25 C.F.R. § 162.471 (eff. December 4, 2012) provides:

What will BIA do if a lessee remains in possession after a business lease expires or is terminated or cancelled?

If a lessee remains in possession after the expiration, termination, or cancellation of a business lease, we may treat the unauthorized possession as a trespass under applicable law in consultation with the Indian landowners. Unless the Indian landowners of the applicable percentage of interests under § 162.012 have notified us in writing that they are engaged in good faith negotiations with the holdover lessee to obtain a new lease, we may take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action.

23. The United States has been fully aware since July 31, 2016, that the USPS has been using and occupying the subject building located on restricted grant lands belonging to the Pueblo without any legal right to do so, which use constitutes a

continuing trespass; and, the Pueblo of Jemez did not give the BIA notification in writing that it was “engaged in good faith negotiations with the holdover lessee to obtain a new lease” as required by 25 C.F.R. § 162.471 to relieve the United States of its legal duty (or defer duty to) to take action regarding USPS’s continued use of the subject land and building after expiration of its ground lease with the Pueblo on July 31, 2016.

24. The United States took no action in 2016 and has taken no action from then over the ensuing years to the present, to inform USPS that the Pueblo owns the USPS facility on the premises, that USPS has been in trespass since July 31, 2016, and that the sublease executed by USPS were not in force after the ground lease expired on July 31, 2016, and that fair market value rentals for both the land and the building should be paid to the Pueblo per a new Lease going forward.

25. Yet, the United States had found, concluded and admitted per a letter of August 10, 2020, that the facts set out in ¶ 24 as pled above were true. A true and correct copy of that letter is attached hereto as **Exhibit C** and incorporated herein as if specifically set forth. The BIA’s letter of August 10, 2020 (**Exhibit C**) was in response to the Pueblo’s letter of June 10, 2020, requesting the BIA’s position on the matters later addressed in the BIA’s letter of August 10, 2020. A true and correct copy of the Pueblo’s letter of June 10, 2020, is attached hereto as **Exhibit D**. Notwithstanding the BIA’s duty per §162.471, and even after issuance of its letter of August 10, 2020, the BIA still took no action to protect the Pueblo’s interest in this matter as required by that regulation.

26. The BIA violated the federal statutes and regulations cited above, which statutes and regulations imposed fiduciary duties upon the BIA to take timely action to (at

minimum) inform the USPS of the legal consequences of its holdover following expiration of its extended lease, as summarized at ¶ 24, *supra*, and those statutes and regulations are “money mandating” giving rise to the Pueblo’s right to recover monetary relief for the BIA’s breach thereof in this suit.

STATEMENT OF CLAIM

27. The Pueblo has since July 31, 2016, stood ready, willing and able to enter into a new long-term lease with USPS for fair market value rent for the subject land and building; and the USPS was from and after July 31, 2016 ready, willing and able to enter into a new long-term lease for the said building and lease, but then thought its prior putative sublessees still owned the building. This misinformation has impeded the Pueblo’s ability to secure a new long-term lease with USPS for the building and land.

28. If the BIA had then informed the USPS of the factual and legal conclusions set out in paragraph 24, the Pueblo would have been able to enter into a new long-term lease with USPS as of August 1, 2016, at fair market value rents for both the building and the land.

29. The Pueblo formally asked the BIA in 2020 to assist in securing a new long-term lease with the USPS for the subject land and building at fair market value rents by letter of June 10, 2020. A true and correct copy of that letter is attached hereto as **Exhibit D**. The BIA, however, while agreeing with the Pueblo’s legal position on the matters giving rise to this suit (as evidenced by **Exhibit C**), thereafter failed and refused to give notice to USPS and to the prior purported sublessees of its legal findings and

conclusion on these matters as there set out despite the Pueblo's request that this be done, as follows:

(a) By letter of November 30, 2020, after receipt of the BIA's letter of August 10, 2020, the Pueblo requested that the BIA inform USPS and the prior purported sublessees of BIA's findings and conclusions on this matter per 25 C.F.R. Part 2 or otherwise. A true and correct copy of that November 30, 2020 letter is attached hereto as **Exhibit E**.

(b) By letter of December 28, 2020, the BIA stated that it would not give notice to the USPS and the prior purported sublessees of the BIA's findings and conclusions set out in the BIA's letter of August 10, 2020, and told the Pueblo it would not share those findings and conclusions with the USPS per 25 C.F.R. Part 2 or otherwise. A true and correct copy of the BIA's letter of December 28, 2020 is attached hereto as **Exhibit F**.

30. If the BIA had then informed the USPS of the factual and legal conclusions in paragraph 24, the Pueblo would have been able to enter into a new long-term lease with USPS at least as of some point in 2020 and thereafter at fair market value rents for both the building and the land.

31. In 2022, the Pueblo again sought the assistance of the BIA to broker a joint call with the USPS so that the Pueblo and the BIA could jointly raise these issues with USPS. The BIA did set up that call by letter of March 18, 2022, (a true and correct copy of which is attached hereto as Exhibit G), which letter merely stated that the USPS lease had expired July 31, 2016, and summarized the issues to be addressed in the call, but

again failed to inform the USPS of the BIA's findings and conclusions set out in the BIA's letter of August 10, 2020, as summarized in paragraph 24.

32. The call with USPS occurred on July, 6, 2022. During that call, the BIA again declined to state anything on those issues, leaving it up to the Pueblo to set out for USPS the factual and legal basis for the Pueblo's position that:

a) the Pueblo has owned the postal facility since expiration of the USPS ground lease from the Pueblo July 31, 2016;

b) whatever subleases lawfully existed prior to July 31, 2016, came to an end when the USPS ground lease from the Pueblo expired on July 31, 2016;

c) The USPS and the prior purported sublessees are in trespass;

d) USPS now needs to enter into a new lease with the Pueblo (without any further involvement of the prior purported sublessee) for rental of the building and lands.

33. The BIA failed and refused on that call to support the Pueblo or to reinforce the Pueblo's legal position on these findings and conclusions and failed and refused to state the BIA's own findings and conclusions regarding these issues; and, instead, stated that BIA's only role regarding resolution of this matter was to set up that call.

34. Thus, even in 2022, as the Pueblo has worked to resolve these issues through negotiation with USPS for execution of a new long-term lease, the BIA has failed and refused to share its legal findings and conclusion respecting these matters as

set out in the BIA's letter of August 10, 2020 (**Exhibit C**), forcing the Pueblo to address these issues with USPS on its own.

35. Notwithstanding the BIA's breach of duty as set out above, the Pueblo was informed by the USPS by email of July 19, 2022, that the USPS was persuaded by the Pueblo's presentation during the July 6, 2022 phone call that the Pueblo is and has been since July 31, 2016, the true owner of the said USPS facility and is now committed to execution of a new lease with the Pueblo to cover both ground and building rents at fair market value rentals, to commence as soon as possible.

36. The Pueblo may be able to collect some building rents from the USPS for some of the prior period not covered by the new lease and to mitigate its damages in regard to the damages here sought from the United States based on the BIA's actions and inactions as here pled, and will credit the United States for any building rentals the Pueblo collects from the USPS by other means.

37. The BIA's failure to timely provide notice of these matters to USPS, from August 2016 to the present, has delayed and hampered the Pueblo's ability to persuade USPS that it should enter into a new lease with the Pueblo for the subject land and building and stop sending building rents to the prior purported sublessee, and was in breach of the United States' trust duties to the Pueblo.

38. Each day that the Department of Interior delayed in sharing its findings and conclusions on these issues with USPS prolonged the period in which the Pueblo was deprived of fair market value rents for this land and building, and each day of such delay

constituted a separate and continuing breach of the government's fiduciary duties to the Pueblo regarding this expired lease.

WHEREFORE, Plaintiff prays that the Court enter judgment for Plaintiff in such amount as may be proven at trial or otherwise found by the Court to be compensation due to the Plaintiff, plus costs, interest and attorneys' fees as permitted by law, and for such other relief as the Court deems just.

Respectfully submitted,

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